

DOCKET FILE COPY ORIGINAL

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 80 of the)
Commission's Rules Concerning the)
General Exemption for Large)
Oceangoing Cargo Vessels and Small)
Passenger Vessels)

PR Docket 93-133

To: The Commission

COMMENTS OF THE AMERICAN RADIO ASSOCIATION

Mimi W. Dawson
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C.
(202) 429-7000

Its Government Affairs
Consultant

James T. Bruce
Nancy J. Victory
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

July 6, 1993

No. of Copies rec'd
List ABCDE

244

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. EXTENDING THE GENERAL EXEMPTION TO VESSELS SAILING BEYOND THE 48 CONTIGUOUS STATES VIOLATES THE SOLAS TREATY AND THUS IS BEYOND THE COMMISSION'S AUTHORITY	3
III. THE PROPOSAL INVITES CHEATING ON THE COMMUNICA- TIONS ACT'S 150 NAUTICAL MILE LIMIT FOR RADIOTELEGRAPH EXEMPTIONS	6
IV. EXPANDING THE SCOPE OF THE EXEMPTION WILL COMPROMISE SAFETY AT SEA	10
V. CONCLUSION	15

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 80 of the)
Commission's Rules Concerning the) PR Docket 93-133
General Exemption for Large)
Oceangoing Cargo Vessels and Small)
Passenger Vessels)

To: The Commission

COMMENTS OF THE AMERICAN RADIO ASSOCIATION

The American Radio Association ("ARA"), by its attorneys, hereby submits its comments on the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

The Commission's Rules currently exempt large oceangoing cargo vessels from the Communications Act's radiotelegraph and Radio Officer requirements, provided that these vessels operate on domestic voyages along the coasts of the 48 contiguous states and do not venture more than 150 nautical miles from the nearest land.² The Notice proposes to expand the scope of this general exemption by redefining "domestic

¹ Amendment of Part 80 of the Commission's Rules Concerning the General Exemption for Large Oceangoing Cargo Vessels and Small Passenger Vessels, FCC 93-214 (released May 12, 1993).

² See 47 C.F.R. § 80.836 (1992). This provision also requires exempted vessels to carry additional, specified communications equipment.

voyage" to include "ports in Alaska, Puerto Rico, along the coasts of the 48 contiguous states and routes through the Panama Canal Zone, so long as the vessel does not make port in a foreign destination."³

ARA submits that a general exemption based upon this expanded definition of "domestic voyage" is inconsistent with

Moreover, the proposal will encourage cheating on the 150 nautical mile limitation the Communications Act imposes on such exemptions. Because remaining within the 150 nautical mile zone will significantly lengthen many of the voyages targeted by the proposal, the expanded exemption will require a departure from the usual and ordinary routing and invite ship owners and masters to ignore this requirement and travel the most direct route to their destination. Finally, expanding the current exemption will compromise safety at sea by removing the ship's trained communications and electronics specialist and substituting complex communications equipment which must function in a system that is not yet fully operational.

II. EXTENDING THE GENERAL EXEMPTION TO VESSELS SAILING BEYOND THE 48 CONTIGUOUS STATES VIOLATES THE SOLAS TREATY AND THUS IS BEYOND THE COMMISSION'S AUTHORITY

In the Notice, the Commission takes great pains to define as "domestic voyages" those that are undertaken through the waters of neighboring foreign countries, "so long as the vessel does not make port in a foreign destination."⁴ Presumably, the Commission's motivation for so classifying these voyages was to remove this action from the scope of the SOLAS Convention. The treaty, which applies only to

⁴ Notice at 4.

However, ARA submits that voyages through the waters of foreign countries -- particularly through the Panama Canal⁶ -- are international voyages subject to the requirements of the SOLAS treaty. These voyages clearly fall within the

neighboring foreign countries have an interest in ensuring that such U.S. ships sailing along their coasts meet minimum international safety standards. As such, voyages beyond the contiguous 48 states -- such as those contemplated by the proposal -- clearly raise concerns similar to other international voyages and are thus within the scope of the SOLAS Convention.

While the SOLAS treaty permits signatory nations to grant exemptions to its radiotelegraph requirements, such exemptions may only be granted to "individual" ships following an assessment that

the maximum distance of the ship from shore, the length of the voyage, the absence of general navigational hazards, and other conditions affecting safety are such as to render full application [of the radiotelegraph requirements] unreasonable or unnecessary.⁶

⁶ International Convention for the Safety of Life at Sea, Nov. 1, 1974, ch. IV, reg. 5(b), TIAS 9700 (1974). Although the 1988 Amendments to the SOLAS treaty significantly revised Chapter IV to govern the implementation of GMDSS and its equipment requirements, ships carrying the other substitute equipment during the GMDSS transition period are still subject to the requirements of the prior version and could not be granted an exemption from the radiotelegraph requirement without a ship-by-ship assessment. See 1988 Amendments to SOLAS Convention, ch. IV, reg. 1(5)(.1.2).

Because the 1988 Amendments describe GMDSS requirements, ships eligible for a radiotelegraph exemption under the proposed rule that implement GMDSS instead of the other substitute equipment may not be subject to a ship-by-ship assessment (because they would be complying with the requirements of the treaty). However, as detailed in Section IV below, relying solely upon GMDSS during the transition period raises serious public interest concerns.

By proposing a blanket exemption without such analysis for each ship and the conditions of a specific voyage, the Notice's proposal violates the treaty and cannot lawfully be adopted.⁷

III. THE PROPOSAL INVITES CHEATING ON THE COMMUNICATIONS ACT'S 150 NAUTICAL MILE LIMIT FOR RADIOTELEGRAPH EXEMPTIONS

Section 352(b) of the Communications Act permits the Commission to exempt from the radiotelegraph station and Radio Officer requirements of the Act "[c]argo ships which in the course of their voyage do not go more than one hundred fifty nautical miles from the nearest land."⁸ This limitation on the Commission's exemption authority was adopted for sound technical reasons. One hundred fifty nautical miles is recognized by the Commission as the average distance that medium frequency radiotelephone equipment can reliably cover.⁹ For communications over longer distances, a radiotelegraph or other means of long range communications is needed.

⁷ For example, during the hurricane season, which affects many of the sea areas where the proposed exemption applies, it might be considered inappropriate to grant such an exemption.

⁸ 47 U.S.C. § 352(b)(2) (1991).

⁹ Notice at n.14.

Despite the sound basis for this statutory requirement, the Notice's proposal invites violations of the 150 nautical mile limitation. While all of the voyages contemplated by the proposal could be accomplished by remaining within the 150 nautical mile zone, many of the newly-eligible voyages are normally negotiated through more direct trade routes that are significantly farther from shore.¹⁰ Completing such trips while remaining within this coastal area would add significantly to the time and costs of the voyage. For example,

nautical mile zone.¹⁵ Under these circumstances where it cannot be assumed that vessels will remain within 150 nautical miles from shore, the Commission should refrain from exercising its authority.¹⁶

specialist in operating, maintaining and repairing the ship's communications and electronics equipment.¹⁸ Adopting a proposal which removes these critical safeguards would not only violate the specific requirements of the Act, but also the Commission's public interest mandate.

IV. EXPANDING THE SCOPE OF THE EXEMPTION WILL COMPROMISE
SAFETY AT SEA

Even assuming that vessels subject to the proposed

As ARA has demonstrated repeatedly in related proceedings, Radio Officers play a vital role in averting or minimizing disaster at sea.²⁰ The Radio Officer is a communications specialist capable of operating, maintaining and repairing the ship's communications and related equipment. No other crewmember possesses the training to repair and maintain the complex electronics equipment common on today's vessels. Without a Radio Officer, a ship may be forced to sail for weeks without the use of an essential piece of equipment. In some cases, such malfunctioning equipment could result in a maritime disaster.

In the event of an emergency, Radio Officers are trained and dedicated to respond instantly to provide communications support. Because of manning reductions, existing crew members are already overburdened with the responsibilities of their current positions.²¹ In time of crisis, someone minimally trained in the operation of the ship's communications equipment cannot be expected to abandon his or her other duties to send repeated distress calls or to try to

²⁰ See, e.g., Comments of ARA in PR Docket 90-480 (filed June 7, 1991).

²¹ Several maritime organizations, including the American Institute of Marine Underwriters, have gone on record that "reduced crew levels aboard ships are a disaster waiting to happen." Russ Banham, "Ship Safety Sacrificed for Profits, Insurers Say," Journal of Commerce, July 16, 1991 at 11A. This is especially true when the crew member eliminated is the ship's dedicated communications specialist.

repair malfunctioning equipment.²² Without a Radio Officer, critical communications responsibilities are more likely to be made secondary or overlooked altogether.²³ Clearly, this

22 One captain who was subject to added communications duties due to the FCC's grant of a waiver of the requirement to carry a Radio Officer was quoted by the Boston Globe as stating:

What if I get in trouble? Say my ship is on fire, or I send an S.O.S. Do I stay on the bridge and direct firefighting, or do I go in the radio room? Where am I supposed to go now?

"Companies Cutting Radio Officers Amid Ship Safety Concerns," Boston Globe, Sept. 18, 1989 at 1, 6. See also "Many Oil Tankers Lack Radio Officer After U.S. Eases Rule," New York Times, Sept. 20, 1989 at A24.

Further, the masters and deck officers of the International Organization of Masters, Mates and Pilots, as well as the Marine Engineer's Beneficial Association - District 1 have passed resolutions stating that performing

essential member of the crew should not be permitted to be removed unnecessarily.

In place of the Radio Officer and standard radiotelegraph equipment, the proposal requires that ships install the Global Maritime Distress and Safety System ("GMDSS") or certain other enumerated equipment. ARA submits that permitting GMDSS to serve as a substitute for radiotelegraphy is premature. While GMDSS will be the means of maritime communications in the future, it is not yet fully implemented.

As an initial matter, critical aspects of GMDSS have not yet been activated. GMDSS relies integrally on digital selective calling ("DSC") to transmit distress alerts from ships and the associated acknowledgements from coast stations. However, the Coast Guard has indicated that full implementation of DSC will not occur until 1997 or 1998.²⁴ The Coast Guard has acknowledged that "[u]ntil then, [it] cannot receive a DSC distress alert unless a mariner with a DSC-compatible radio receives an alert and relays it to the Coast Guard."²⁵ Clearly, this very roundabout and unreliable

²⁴ See Joseph D. Hersey, Jr., "U.S. Coast Guard Planning for the Implementation of Digital Selective Calling."

²⁵ U.S. Coast Guard, Special Notice to Mariners, LNM-19-93 (May 4, 1993).

means of distress communications is not an acceptable method for ensuring safety.²⁶

Further, until 1999 when the GMDSS transition period is complete, all vessels will not have GMDSS capabilities. In the meantime, some vessels will be able to communicate via the GMDSS system while others will rely primarily on existing radiotelegraph equipment. Because different ships will be operating under different systems, there is a heightened potential for a lapse in communications that could severely compromise safety.²⁷ Accordingly, the public interest requires that, at least until the end of the transition period, the Commission not permit GMDSS to substitute completely for reliable communications equipment and trained personnel.

²⁶ Thus, HF DSC could not be viewed as a reliable emergency back-up at this time to an INMARSAT ship earth station.

²⁷ In theory, a vessel with a GMDSS capability may hear a distress call directly from an endangered ship on the high seas beyond ship-to-ship VHF range on a 2182 kHz watch receiver. Similarly, a ship without a GMDSS installation would be alerted to a distress situation out of VHF range by receiving an alert on 500 kHz. However, U.S. flag vessels in voluntary compliance with GMDSS prior to the February 1, 1999, the mandatory installation date (and operating under a waiver of the type proposed in the Notice), will not be likely to have a 500 kHz auto alarm receiver that will pick up a radiotelegraph distress call. Thus, the S.O.S. from the non-GMDSS equipped ship may not be heard by the nearest vessel, if that vessel is beyond 2182 kHz range.

V. CONCLUSION

For the foregoing reasons, the proposed amendment to Section 80.836 of the Commission's Rules raises serious concerns regarding compliance with the United States' treaty obligations and the Commission's authority to take the proposed actions, as well as the Commission's public interest mandate. Accordingly, ARA urges the Commission not to adopt the proposal.

Respectfully submitted,

AMERICAN RADIO ASSOCIATION

By: Mimi W. Dawson (NV)
Mimi W. Dawson
of
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C.
(202) 429-7000

Its Government Affairs
Consultant

By: Nancy J. Victory
James T. Bruce
Nancy J. Victory
of
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

July 6, 1993